

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MERCY, INC. d/b/a AMR LAS VEGAS  
Employer

and

Case 28-RC-239046

AMERICAN FEDERATION OF STATE COUNTY  
AND MUNICIPAL EMPLOYEES AFSCME  
LOCAL 4041 (AFSCME LOCAL 4041, EMS  
WORKERS UNITED-AFSCME)  
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's determination to hold the petition in abeyance is denied as it raises no substantial issues warranting review.<sup>1</sup>

JOHN F. RING,

CHAIRMAN

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<sup>1</sup> In denying review, we note that the Board applies an "abuse of discretion" standard in reviewing the decision of the Regional Director to hold the petition in abeyance. *Mark Burnett Productions*, 349 NLRB 706, 707 (2007). The petition in this case was filed on April 4, 2019, and an election was held on April 26 and 30. In May, the Petitioner filed objections to the election and an unfair labor practice charge that paralleled the objections but did not simultaneously request the petition be held in abeyance. On June 14, the Hearing Officer's Report sustained some of the objections and recommended a rerun election. The Petitioner then filed the request to block this rerun election, and the petition has been held in abeyance since July 18, pending the investigation and disposition of the unfair labor practice charge filed in May. Although the unfair labor practice charge was filed in May, and the Hearing Officer has issued a report sustaining some of the objections in June, the Regional Director has not made a determination on the disposition of the unfair labor practice charge. We are troubled by the processing of the petition and the associated delay. It is peculiar to block a rerun election based on the conduct warranting a rerun election. It is also difficult to understand why there has been no further action by the Regional Director on the unfair labor practice charge since the decision to hold the petition in abeyance, notwithstanding the existence of the Hearing Officer's Report, which would typically provide a basis for making a merit determination. Nevertheless, the circumstances before the Board fall short of establishing that the Regional Director abused his discretion under current law.

The Board observes that it recently issued a Notice of Proposed Rulemaking that addresses, among other things, possible changes to the Board's blocking charge policy. See Representation-Case Procedures: Elections Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships, 84 Fed. Reg. 39930-01 (proposed Aug. 12, 2019). For institutional reasons, the Board nevertheless applies extant law here in denying the Employer's Request for Review.

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

Dated, Washington, D.C., December 9, 2019